

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>IN RE:</b>	)	
	)	
<b>BELLE FOODS, LLC,</b>	)	<b>Chapter 11</b>
	)	<b>Case No. 13-81963-11</b>
<b>Debtor.</b>	)	
	)	

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**OBJECTION AND RESERVATION OF RIGHTS OF SOUTHERN FAMILY  
MARKETS LLC REGARDING AMENDED CURE SCHEDULE**

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COMES NOW, Southern Family Markets LLC (“SFM”), for itself and on behalf of the other non-debtor counterparties to the IP License and Unitary Lease (each as defined below), and submits this objection and reservation of rights (the “Objection and Reservation of Rights”) regarding the Debtor’s Amended Cure Schedule (as defined below):

**BACKGROUND**

1. On August 12, 2013, this Court entered the *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (A) Authorizing Postpetition Financing, (B) Authorizing Use of Cash Collateral, (C) Granting Adequate Protection, and (D) Granting Related Relief* [Docket No. 340] (the “Final DIP Order”). Pursuant to the Final DIP Order, the Court approved a refinancing (the “Roll Up”) of the Prepetition Obligations (as defined in the Final DIP Order) in an amount provided in the Amended DIP Term Sheet (as defined in the Final DIP Order).

2. Also on August 12, 2013, the Court Entered the *Order (A) Approving Bid Procedures Relating to Sale of Certain of The Debtor’s Assets; (B) Scheduling a Hearing to Consider the Sale; (C) Establishing Notice and Procedures Related to the Assumption and Assignment of Certain Contracts and Leases; and (D) Granting Related Relief* [Docket No. 341]

(as amended,<sup>1</sup> the “Bid Procedures Order”).

3. Pursuant to the Bid Procedures Order, on September 13, 2013, the Debtor filed a Notice of Amended Cure Schedule [Docket No. 506], attaching thereto a Cure Schedule as required by the Bid Procedures Order (the “Amended Cure Schedule”).<sup>2</sup> The Amended Cure Schedule lists a “Unitary Lease” (the “Unitary Lease”) by and between the Debtor and “Southern Family Markets LLC, as Administrative Agent,” with a cure amount of “\$0.00,” and an “Intellectual Property License Agreement” (the “IP License”) by and between “Southern Family Markets LLC, Piggly Wiggly LLC, and Surry Licensing LLC,” also with a cure amount of “\$0.00.”

4. Pursuant to the Bid Procedures Order, any objection to the Amended Cure Schedule must be in writing and filed with the Court and served on the Notice Parties (as defined in the Bid Procedures Order) no later than 5:00 p.m. (Prevailing Central Time) on the date that is ten (10) calendar days prior to the date of the Sale Hearing, which date is September 17, 2013 (the “Cure Objection Deadline”).

### **OBJECTION AND RESERVATION OF RIGHTS**

5. Pursuant to Bankruptcy Code<sup>3</sup> section 365(b), an executory contract or unexpired lease of the debtor that is in default may not be assumed unless, *inter alia*, such default is cured. The Debtor is in default under the IP License and Unitary Lease.

6. Certain amounts that are owed by the Debtor under the Unitary Lease and IP License have been reduced or eliminated by postpetition adjustments that include, *inter alia*, the Roll Up and adequate protection for the use of cash collateral approved by the Final DIP Order.

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<sup>1</sup> See Docket. No. 448.

<sup>2</sup> The Debtor previously filed cure schedules pursuant to the Bid Procedures Order that were amended and superseded by the Amended Cure Schedule. See Docket Nos. 425, 2426, 459.

<sup>3</sup> 11 U.S.C. § 101, *et seq.*

Upon information and belief, following the entry of the Final DIP Order, the Debtor has paid or is expected to pay amounts owed under the Unitary Lease and IP License as they become due. However, SFM submits this Objection and Reservation of Rights to the extent that, upon the ultimate date of assumption and assignment of the Unitary Lease (or any sublease entered into arising out of the Unitary Lease) and/or IP License, amounts are owed that have not been satisfied by the Debtor, including, but not limited to, amounts for accrued CAM, insurance, and/or taxes that are payable under the Unitary Lease.

7. SFM further submits this Objection and Reservation of Rights to reserve its right to assert that amounts are owed by the Debtor under the Unitary Lease (or any sublease entered into arising out of the Unitary Lease) and/or IP License (as “cure” or otherwise) in the event that any of the relief granted in the Final DIP Order—including the Roll Up and adequate protection for the use of cash collateral—is later set aside.

8. SFM reserves the right to assert that the past or future payment of amounts arising under the Unitary Lease and/or IP License are not sufficient to “cure” the Debtor’s defaults thereunder. SFM further reserves the right to amend this Objection and Reservation of Rights and to assert and file any and all additional claims of whatever kind or nature that it has or may hereafter have against the Debtor related to the Unitary Lease, IP License, or otherwise.

9. Finally, SFM expressly reserves, on behalf of itself and its affiliates, the right to (i) object<sup>4</sup> to the assumption and assignment of the Unitary Lease, IP License, and/or any other executory contract or unexpired lease between SFM (including any of its affiliates) and the Debtor, whether or not such executory contract or unexpired lease is listed on the Amended Cure

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<sup>4</sup> The deadline for such objection is set by the Bid Procedures Order as 5:00 p.m. (Prevailing Central Time) on September 20, 2013.

Schedule; and (ii) assert that the IP License is not an “executory contract” subject to Bankruptcy Code section 365.

Respectfully submitted this September 17, 2013.

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## **CERTIFICATE OF SERVICE**

I hereby certify that the forgoing **OBJECTION AND RESERVATION OF RIGHTS OF SOUTHERN FAMILY MARKETS, LLC REGARDING AMENDED CURE SCHEDULE** was filed this September 17, 2013, via the Court's electronic case filing and noticing system and thereafter served on all parties registered to receive electronic notice in this matter, and by electronic mail and U.S. Mail according to the attached Master Service List, and to the Notice Parties as hereinafter set forth.

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